

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

**FILED**

NOV 12 2013

Clerk, U.S. District Court  
District Of Montana  
Missoula

KINGSLEY ARIEGWE,

Petitioner,

vs.

LEROY KIRKEGARD; ATTORNEY  
GENERAL OF THE STATE OF  
MONTANA,

Respondents.

Cause No. CV 13-91-DWM-RKS

RECOMMENDATION AND ORDER

On October 31, 2013, Petitioner Kingsley Ariegwe filed this action for a writ of habeas corpus under 28 U.S.C. § 2254. Mr. Ariegwe is a state prisoner proceeding pro se.

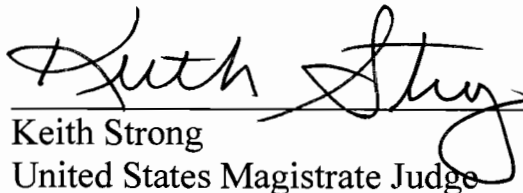
Mr. Ariegwe's motion to proceed in forma pauperis should be denied. The instant petition is Mr. Ariegwe's fifth challenge to his 2004 conviction for attempted sexual intercourse without consent and unlawful transactions with a child. *See Ariegwe v. Kirkegard*, No. CV 12-101-GF-SEH-RKS (D. Mont. judgment entered Dec. 17, 2012); *Ariegwe v. Kirkegard*, No. CV 12-37-GF-SEH-RKS (D. Mont. judgment entered June 13, 2012); *Ariegwe v. Mahoney*, No. CV 11-43-H-DWM-RKS (D. Mont. judgment entered Aug. 31, 2011); *Ariegwe v. Ferriter*, No. CV 08-79-GF-SEH-RKS (D. Mont. judgment entered Apr. 21, 2009).

As Mr. Ariegwe has repeatedly been advised, district courts lack jurisdiction to consider a second or successive challenge to a conviction. 28 U.S.C. § 2244(b)(3)(A); *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam). The Ninth Circuit Court of Appeals must pre-authorize the filing of a successive petition. 28 U.S.C. § 2244(b)(3)(A). It has not done so.

A certificate of appealability is not warranted. All reasonable jurists would agree it is unreasonable and abusive to continually file successive habeas petitions challenging the same conviction in a district court that does not have jurisdiction. Likewise, transfer of the petition to the Court of Appeals is not in the interests of justice. 28 U.S.C. §§ 1631, 2244(b). Nor should Mr. Ariegwe be given time to pay the filing fee. D. Mont. L.R. 3.1(d)(3). The action should be dismissed immediately because it is frivolous and wasteful of the Court's time and resources.

Accordingly, the Court RECOMMENDS the following Order should be entered by Judge Molloy.

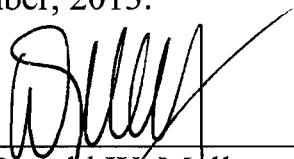
DATED this 7th day of November, 2013.

  
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Keith Strong  
United States Magistrate Judge

Based on the above Recommendation by Judge Strong, IT IS HEREBY  
ORDERED as follows:

1. Mr. Ariegwe's motion to proceed in forma pauperis (Doc. 3) is DENIED.
2. The Petition (Doc. 1) is DISMISSED.
3. The Clerk of Court shall enter, by separate judgment, a judgment of dismissal.
4. A certificate of appealability is DENIED.

DATED this 12<sup>th</sup> day of November, 2013.



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Donald W. Molloy  
United States District Court

